IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8348 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RANCHHODBHAI JOITARAM PATEL

Versus

DEVENDRAKUMAR BECHARBHAI

Appearance:

1. Special Civil Application No. 8348 of 1991

MR RC JANI for Petitioner No. 1

MR GM AMIN for Respondent No. 1-3

MR AJ PATEL for Respondent No. 4

NOTICE SERVED for Respondent No. 5-8

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 14/02/2003

ORAL JUDGEMENT

The present petition is filed against the order passed by the learned Additional Chief Secretary, Revenue Department (Appeals), Gujarat State,Ahmedabad, confirming the order passed by the Prant Officer, in Fragmentation

Case No. 14/81 on 29.12.1990.

2. The case of the petitioner is that the petitioner was cultivating the land in question from 8.5.1978 and therefore his name was shown in Village Form No. 7/12 Extract as a tenant and thereafter the petitioner had purchased the said land admeasuring about 1.36 acres by way of Sale Deed in the year 1978 and thus the petitioner had become the absolute owner of the said land. It was further stated in the petition that after purchase of the said land, the petitioner had made major changes in the said land for improving it for the purpose of irrigation. The land in question was an irrigated land and limitation regarding fragmentation of land would not have arisen. It was further submitted that the provision of Fragmentation Act is not applicable as the land was being irrigated. However, notice was issued on the petitioner on 23.7.1990 under Section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act stating that the land in question was divided into two blocks which is contrary to the said provision and hence explanation was sought for as to why the said transaction should not be cancelled. Thereafter, the Prant Officer had passed an order on 29.12.1990 holding that the sale transaction in question was illegal as no permission of the Collector under Section 31(2)(k) was obtained and hence the said sale was ordered to be cancelled. The said order was challenged in appeal before the Additional Secretary, Revenue Department (Appeals),Gujarat State, Ahmedabad and the order passed by the Prant Officer was confirmed for the reasons stated in the said order.

3. Being aggrieved by the said two orders, the petitioner has filed the present petition before this Court. This Court has issued Rule and granted interim relief in terms of Para 8(C) of the petition on 22.11.1991. On notice being served on the respondent, Mr. GM Amin, ld. advocate for the respondents No. 1 to 3, Mr. AJ Patel, ld. advocate for respondent No.4 appeared. An affidavit-in-reply was filed on behalf of the Prant Officer, the respondent No.8.

4. Heard Mr. RC Jani, ld. advocate appearing for the petitioner. He has invited my attention to Circular No. 5907 dated 18.2.52 wherein it is stated that if some portion of the agricultural land was to be converted into non-agricultural land the same is not considered as transfer or fragmentation within the meaning of Section 8 of the Act. He has further submitted that as per the said Circular, if any agricultural land is converted into non-agricultural land and if the remaining agricultural

land is divided even on that count the N.A. permission cannot be denied. He has further drawn my attention to Circular No. 3355L dated 1.10.55 wherein it is stated that the land irrigated through tubewells can be considered as "Bagayat" land for the purposes of the Act. He has further invited my attention to the Circular No. 5869 dated 16.4.79. As per the latest Circular of 16.4.79, he has submitted that if the block is divided, the prior approval of the State Government as per Section 31(1) is not required but instead of that, the prior permission of the Collector is required under Section 64(1) of the Act. He has therefore submitted that the Prant Officer has no jurisdiction or authority to pass the impugned order.On the basis of these Circulars,he has submitted that while considering the question regarding cancellation of the sale transaction by invoking the provisions contained in the Bombay Prevention of Fragmentation Act, the authorities have not taken into consideration all these Circulars. Though these Circulars were not pointed out by the petitioner at that time when the Prant Officer and Additional Secretary decided the matter the said authorities may be directed to decide the matter afresh in view of the Circulars issued by the Government from time to time.

5. On the other hand, Mr. Bhavik Patel, appearing for Mr. AJ Patel, learned advocate for respondent No.4 has submitted that the Circulars cited before this Court were not pressed into service by the petitioner before the authorities below. He has further submitted that the sale transaction was in violation of Section 64(1) as admittedly no permission was obtained by the petitioner before entering into such sale transaction and hence the authorities have rightly decided the whole issue. He has further submitted that even otherwise both the authorities have taken the concurrent view and hence it is not open for this Court to interfere in the said orders while exercising the writ jurisdiction under Article 226/227 of the Constitution of India.

6. An Affidavit-in-Reply is filed on behalf of the State wherein it is stated that simply because the petitioner was an agriculturist it would not make him entitled to purchase any land in breach of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. Since the petitioner had not obtained prior permission prior to entering into the said transaction and since there is clear cut breach of Section 31 of the Act, this Court should not interfere with the orders passed by the authorities below. It has been further stated in the affidavit-in-reply that the

petitioner has not canvassed any reason as to why the land was purchased in violation of the provisions of the Act and hence the petitioner has no right, title and/or interest in the said land. It was further stated that the purchase of the land by the petitioner has resulted in fragmentation and the petitioner has not obtained any prior permission from the authorities concerned under the provisions of the Act and hence the purchase made by the petitioner contrary to the provisions of the Act is illegal, unjust and non-est in the eye of law.

7. Having heard the learned advocates appearing for the respective parties and having considered the pleadings made by them, I am of the view that the interests of justice would be met with if the impugned orders are quashed and set aside with a direction to the Prant Officer to examine the whole issue afresh in light of the Circulars issued by the State Government from time to time more particularly the Circulars referred to hereinabove in this Judgement, and if the petitioner's case would fall within the parameters laid down in the said Circulars, the authorities may grant necessary permission to the petitioner and ratify the action of purchasing the land by the petitioner. Since the matter is remanded only on this short count, this Court has not gone into the other issues raised in this petition and it is open for the authorities to decide the whole issue afresh in accordance with law and after giving proper opportunities to the petitioner to present his case before him. The authorities are directed to decide the matter as expeditiously as possible preferably within the period of six months from the date of receipt of the certified copy of this order or from the date of receipt of the writ from this Court whichever is earlier.

8. With the above observations, the petition is accordingly disposed of. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]